

Remarks

In the Restriction Requirement dated August 8, 2004, the Examiner restricted the presently pending claims to Group I (claims 1-4 and 6-9) and Group II (claims 10-13 and 15-18), and reclassified Group I (claims 1-4 and 6-9) in class 454, subclass 263. Claims 5, 14, 19 and 20 were previously canceled. Applicant respectfully traverses the newly presented classification of Group I (claims 1-4 and 6-9) in class 454, subclass 263, and the Restriction Requirement. Applicant respectfully requests the Examiner reconsider and withdraw the newly presented classification of Group I, and the Restriction Requirement. Applicant does not concede the entire application presents or does not present patentably distinct inventions.

Regarding the newly presented classification of Group I (claims 1-4 and 6-9), Applicant notes that, initially, the presently pending application was classified in class 42. (See, Filing Receipt). Applicant further notes that the reference art cited by the Examiner in the Office Action dated June 14, 2004 was predominantly related to class 42. (See, Notices of References Cited in the Office Action dated June 14, 2004). No reference art cited in the Office Action dated June 14, 2004 concerns class 454.

Independent claim 1 is directed to a catcher for receiving expended shell casings from a firearm having an ejection port as the firearm is discharged. The catcher comprises a hollow housing having a plurality of rigid walls, wherein one of the walls has an opening in communication with the ejection port when the catcher is mounted to the firearm for receiving the shell casings, and a lining fixed inside the rigid walls, wherein the lining comprises an acoustic foam having a plurality of wedges and the wedges are configured to deflect the shell casings into the catcher, and each of the wedges has a front face that is slanted away from the opening such that the casings are deflected away from the opening and a rear face that is perpendicular to the planar surface of the housing or slanted away from the opening such that the casings are resisted from traveling back toward the opening even when bouncing inside the housing.

The Examiner asserts that the invention listed in Group I (claims 1-4 and 6-9) is to be reclassified into class 454, subclass 263. However, as listed on the U.S. Patent and Trademark Office Website (www.uspto.gov):

Class 454 - VENTILATION

SECTION I - CLASS DEFINITION

This is the parent class for apparatus and processes for supplying air to and removing it from enclosures, for distributing and circulating the air therein, or for preventing its contamination.

Subclass 254 - HAVING INLET AIRWAY:

This subclass is indented under the class definition. Subject matter comprising means for admitting air to a (ventilated) space. (1) Note. Subject matter relating to an airway which is not specifically an inlet or outlet airway (i.e., the airway can be used for either) is included in this and indented subclasses.

Subclass 261- Including structure for mixing plural air streams together:

This subclass is indented under subclass 254. Subject matter in which the means for admitting the air includes a configuration which unites separately originating currents of air into a combined current of air. (1) Note. A means which mixes induced flow recirculation air with fresh inlet air for flow into a ventilated space is included in this and indented subclasses.

Subclass 263 - With shaped nozzle:

This subclass is indented under subclass 261. Subject matter wherein the air uniting configuration includes a continuous formed, projecting, air spout with an opening therethrough for carrying one of the currents of air to be combined. (1) Note. A flat plate with a hole or plurality of holes is not considered to be a shaped nozzle unless it is on the end or side of a formed, projecting, spout-like structure.

(2) Note. Structures which mix plural air streams together and subsequently eject the combined air stream through a nozzle are not included in this subclass.

However, nowhere are claim 1 or any of the dependent claims in Group I directed to apparatus and processes for supplying air to and removing it from enclosures, for distributing and circulating the air therein, or for preventing its contamination comprising means for admitting air to a (ventilated) space that includes a configuration which unites separately originating currents of air into a combined current of air wherein the air uniting configuration includes a continuous formed, projecting, air spout with an opening therethrough for carrying one of the currents of air to be combined. To the contrary, independent claim 1 concerns a catcher for receiving expended shell casings from a firearm having an ejection port as the firearm is discharged. The newly proposed classification by the Examiner does not appear to be directed to the invention recited in presently pending Group I (claims 1-4 and 6-9).

Further, Applicant notes that the Examiner has classified Group II (claims 10-13 and 15-18) in class 42, subclass 98. As listed on the U.S. Patent and Trademark Office Website (www.uspto.gov):

Class 42 - FIREARMS

Subclass 98 - Shell catchers

Because independent claim 1 concerns a catcher for receiving expended shell casings from a firearm having an ejection port as the firearm is discharged (i.e., a firearms shell catcher), Applicant believes that class 42, subclass 98 is also the proper classification for Group I (claims 1-4 and 6-9). As such, the newly presented reclassification of Group I (claims 1-4 and 6-9) in class 454, subclass 263 is clearly not proper and should be withdrawn. Alternatively, clarification is respectfully requested.

Regarding the Restriction Requirement, independent claim 10 concerns a method of reducing jamming of a firearm as a spent cartridge is ejected from an ejection port into a cartridge casing catcher when the firearm is discharged. The method comprises providing a hollow housing having a plurality of rigid walls, wherein one of the walls has an opening in communication with the ejection port when the catcher is mounted to the firearm for receiving the shell casings, and fixing a lining inside the rigid walls, wherein the lining comprises an

acoustic foam having a plurality of wedges and the wedges are configured to deflect the shell casings into the catcher, and each of the wedges has a front face that is slanted away from the opening such that the casings are deflected away from the opening and a rear face that is perpendicular to the planar surface of the housing or slanted away from the opening such that the casings are resisted from traveling back toward the opening even when bouncing inside the housing.

Applicant respectfully notes, "If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division)." (See, 37 CFR 1.142, Requirement for restriction).

Here, the Examiner asserts that the invention listed in Group I (claims 1-4 and 6-9) can be used to practice another materially different process [than the invention listed in Group II (claims 10-13 and 15-18)] such as an air conditioning register with acoustic attenuation properties and is, therefore distinct from the invention listed in Group II. The Examiner further asserts that because these inventions are distinct and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

However, in addition to attempting to improperly reclassify Group I (claims 1-4 and 6-9) as discussed above, the Examiner has mischaracterized the requirement for restriction. While Applicant does not concede that Groups I and II provide for or do not provide for distinct inventions, the regulation concerning requirement for restriction as cited above provides that restriction for examination purposes is proper when two or more independent and distinct inventions are claimed in a single application, not merely two or more distinct inventions as the Examiner contends. Further, "The term 'independent' (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of


being used in practicing the process.” (See, MPEP, 802.01, Meaning of "Independent" and "Distinct"). As such, the test to determine if an application concerns two or more independent inventions is not whether a claimed apparatus can be used to practice another materially different process, but rather whether the application claims a process and an apparatus incapable of being used in practicing the process.

Here, the Examiner has failed to provide evidence that the apparatus of Group I (claims 1-4 and 6-9), i.e., a catcher for receiving expended shell casings from a firearm, is incapable of being used in practicing the process of Group II (claims 10-13 and 15-18), i.e., a method of reducing jamming of a firearm as a spent cartridge is ejected from an ejection port into a cartridge casing catcher, as is required for a proper restriction. As such, the restriction requirement is not proper and should be withdrawn. Alternatively, clarification is respectfully requested.

Consequently, in view of these remarks, Applicant respectfully contends that the rejections have been fully replied to and traversed, and that the application is in condition for allowance, and the Examiner is respectfully requested to pass this case to issue. No fee is believed to be due for the filing of this paper. Prompt and favorable consideration of this application is requested. If the Examiner notes any minor errors, he is invited to telephone the undersigned so that the matter can be promptly handled by Examiner's amendment.

Respectfully submitted,

Thomas W. Saur

By: 
Thomas W. Saur

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Thomas W. Saur, P.E.
1932 Chestnut
Dearborn, MI 48124

Phone: Home (evenings) (313) 271-5418
Work (days) (248) 226-2722